IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 569 OF 2000

Shivkumar Ravikumar Gauda ..... Petitioner.

versus

The State of Maharashtra ..... Respondents.

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Mrs. Usha D. Andewar -advocate appointed- absent.
Mrs. Usha V. Kejariwal APP for the State.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 17TH SEPTEMBER, 2004.

ORAL JUDGMENT (Per Palshikar J.);

1. Being aggrieved by the order dated 3-4-2000 passed by the Additional Sessions Judge, Bombay in Sessions Case No. 291 of 1998 convicting the appellant/accused, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. This appeal was filed through jail and therefore advocate of this court was appointed to assist the court at the time of final hearing. However the advocate is not present today. Therefore with the assistance of the learned Additional P.P. Ms.

U.V.Kejariwal, we have scrutinised the record and re-appreciated the entire evidence on record.

3. Facts which emerges on re-appreciation of evidence stated briefly are that on 6th October 1997 around 3.15 in the afternoon, six persons armed with weapons entered the office of Asiatic Travel Services, 12, Merzban Road, Mumbai-1 and at the point of choppers and fake gun started extorting money and ornaments from the staff present. After two persons were made to part with chain and bangles, the staff present realised that the gun was fake and they therefore succeeded in overpowering some of the robbers who were handed over to the police. Police took over investigation and after investigation prosecuted the accused persons in this trial.

4. The prosecution has examined as many as nine witnesses to prove its case and the learned Judge on appreciation of this evidence came to the conclusion that the offences as mentioned above were committed by the present appellant and others, who had escaped on that day. He accordingly convicted the appellant as mentioned above.

5. The prosecution has examined three eye witnesses to give eye witneses account of what exactly transpired on

6th October 1997 in their office. They described how commotion took place, how accusdd persons went about robbing the people around and how they were overpowered. P.w.1 Keki is one of the partners who describes correctly how the accused persons entered the office and by use of weapon committed the robbery. He points out how they were overpowered and handed over to the police.

6. To the same effect is the evidence of P.w.2 Gopal Shetty. He also gives description of the incident and points out how the robbery was effected by the accused.

7. P.w.3 Swati is one such employee of the company who was robbed and she herself was required to hand over her chain, who very candidly says that one of the accused claimed that he was " Dawood ka aadmi hein" and then this witness says therefore she handed over the chain as was afraid of being showed the chopper. The witness then deposed that Anita, her co-worker was required to remove her bangles and handed over the same at the threat of chopper. There is thus consistent version of how robbery took place, given by different employees. True it is, that there are some inconsistences in the evidence given by these witnesses. But the fact that they were eye witnesses cannot be disputed nor can it be disproved by the fact

of existing of certain inconsistencies in their evidence. Taking into consideration the manner in which the robbery is done, the manner in which the employees were threatened, confusion reined at large it is but natural that the witnesses were confused and were unable to pin point exactly what act was done by which person exactly, how robbers attacked the staff. But these inconsistencies are not such as to require disbelieving the entire testimony of the eye witnesses.

8. It must further be seen from the record that factually the chain of P.w.3 was recovered from the accused no.1. Similar is the case of recovery of bangles. These recoveries therefore proved that the incident did take place as was alleged in the witness box by the above witnesses. In such circumstances, we see no reason to interfere with the order of conviction. Appeal therefore must fail and it is dismissed.

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